



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2003

Mr. Scott Gibson  
Enforcement Attorney  
Texas Board of Architectural Examiners  
P.O. Box 12337  
Austin, Texas 78711-2337

OR2003-5983

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186570.

The Texas Board of Architectural Examiners (the "board") received a request for all records relating to a named individual, including her certification number. The requestor also asks whether the individual took the written examination for a state license in Texas. You inform us that the board has released some of the requested information. We note that you have withheld the social security number of a registered interior designer in accordance with the previous determination issued to the board in Open Records Letter No. 2003-3376 (2003). *See* Gov't Code § 552.301; Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301). You claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the board's obligations with regard to the question contained in this request for information. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under chapter 552 of the Government Code. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, chapter 552 does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort

to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We therefore assume that the board has made a good-faith effort to identify any information held by or available to the board that may answer the requestor's question and that the board has released any such information that existed on the date of the board's receipt of this request. If not, then the board must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664. (2000).

Next, we address the board's claims with regard to the submitted information. Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The board claims that the submitted tax returns are confidential under section 6103 of title 26 of the United States Code. Section 6103(a) provides in part that

[r]eturns and return information shall be confidential, and except as authorized by this title . . . no officer or employee of any State . . . who has or had access to returns or return information . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

26 U.S.C. § 6103(a); *see also id.* § 6104(b)(1)-(2) (defining "return" and "return information"). We agree that the board must withhold the submitted federal income tax returns under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

The board also raises section 552.101 in conjunction with common-law privacy. Section 552.101 also encompasses the common-law right to privacy. Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999). The board believes that the submitted college transcript may be protected by common-law privacy under section 552.101. This office has stated, however, that college transcripts submitted by a licensee to a licensing board as part of the licensing process are not protected from public disclosure under section 552.101 unless a statute expressly provides such protection.

*See* Open Records Decision No. 467 at 3 (1987); *see also* Open Records Decision No. 480 at 7-8 (1987) (no constitutional privacy interest in dates on which students attended school and whether they graduated or dropped out). You inform us that the submitted transcript is that of a person who is registered with the board as an interior designer. You do not inform us, and we are not otherwise aware, of any statute that makes the transcript confidential. We therefore conclude that the board may not withhold the submitted transcript under section 552.101 of the Government Code.

In summary, the board must withhold the income tax returns under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The board must release the rest of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

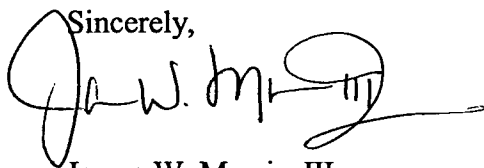
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,  


James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 186570

Enc: Submitted documents

c: Ms. Bonnie Curtiss  
4929 South Colony Boulevard  
The Colony, Texas 75056  
(w/o enclosures)